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In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
JOHN C. SWEET, APPELLEE. } No. 236.

ON APPEAL FROM THE COURT OF CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.

FRANKLIN W. COLLINS,
Special Attorney.

LOUIS A. PRADT,
Assistant Attorney-General.

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STATEMENT.

This is a companion case to that of the *United States* v. *Peter W. Barnett* (No. 235), the only difference being that Sweet was an officer, while Barnett was a private soldier.

Sweet brings his suit under the provisions of section 1289, Barnett under section 1290, of the Revised Statutes of the United States. The only variance in the text of said sections is that whereas in the former section the word "officer" is used, in the latter the word "soldier" takes its place.

The same arguments and authorities are undoubtedly applicable to each case.

The facts in this case are as follows:

Sweet was mustered into the service of the United States at Camp Ramsey, in the city of St. Paul, in the State of Minnesota, August 17, 1898, as second lieutenant in Company A, Fifteenth Regiment Minnesota Volunteers, and served honorably in said regiment within the limits of the United States continuously until October 15, 1898. On said last-mentioned day he was honorably discharged from said service, at Camp Meade, Pa., upon tender of his resignation, under Special Orders, No. 244, as follows:

> Special Orders, No. 244.
>
> HEADQUARTERS OF THE ARMY,
> ADJUTANT-GENERAL'S OFFICE,
> *Washington, October 15, 1898.*
>
> * * * * *
>
> 93.
>
> By direction of the Secretary of War, the following-named officers, having tendered their resignations, are honorably discharged the service of the United States, to take effect this date:
>
> Capt. S. Schieffelin Stebbins, Twelfth New York Volunteer Infantry;
>
> Second Lieut. John C. Sweet, Fifteenth Minnesota Volunteer Infantry.
>
> * * * * *
>
> By command of Major-General Miles:
>
> H. C. CORBIN,
> *Adjutant-General.*

When discharged he was with his regiment, in line of duty, at Camp Meade, Pa., which is distant from the claimant's residence, Minneapolis, Minn., or his place of muster in, St. Paul, Minn., 1,147 miles.

His daily rate of pay at the time of muster out and discharge was $3.89.

He was not furnished transportation or subsistence in kind, travel pay, or commutation of subsistence, for the reason that his discharge was granted upon his resignation, and was by way of favor to him and for his convenience, and hence that he was not entitled to receive or recover the same, under the provisions of section 1289, Revised Statutes.

ASSIGNMENT OF ERROR.

The Court of Claims erred in rendering judgment against the appellant and in favor of the appellee on the findings of fact.

BRIEF.

The attention of the court is respectfully invited to the arguments presented and the list of authorities cited in appellant's brief in the Barnett case (No. 235), which are equally applicable to the case at bar, and which render their reiteration and representation unnecessary.

The contention of learned counsel for appellee, in the court below, that if officers discharged on their own application are not entitled to the benefits of section 1289 there would be but little for it to operate upon, in view of the fact that officers of the Army ordinarily hold their commissions by a tenure of good behavior, is not sound in principle or supported by the facts.

Congress, in the enactment of the law in question, did not and could not know how many or how few

officers of the Army in future times its provisions would affect. It was the intendment of the law, however, to provide, as far as possible, for such exigencies as might arise. It would, indeed, be surprising if it did not occur to the law-making body, in connection with the enactment of such legislation, that the necessity of reducing the military forces of the United States would exist from time to time, and that involuntary discharges of its officers would therefore follow.

That there have been many general reductions of the Army since the original enactment of this law is a matter of historical knowledge, notably at the close of the civil war, also in 1870, and again at the close of the Spanish-American war.

If the spirit of the law be consulted and respected, then the construction of the department charged with the execution thereof will be adopted by the court.

The discharge contemplated by said statute is not a technical discharge, which is really in the nature of a release, at the officer's request, by way of favor to him and for his own convenience, but rather *an involuntary discharge.*

A simple mathematical calculation will suffice to show the unreasonableness of any other interpretation of this section.

The appellee's entire period of service in the United States Army was two days less than two calendar months. During that period he presumably drew second lieutenant's pay, which, at $116.67 per month, would amount to $229.55, or thereabouts. Adding this to the expense to the Government of his

transportation from St. Paul, Minn., where he was mustered into the service, not to mention the cost of his subsistence and maintenance while in the service, and then if there should be added to these sums the amount claimed to be due him for travel pay and commutation of subsistence from Camp Meade, Pa., to St. Paul, Minn., or the sum of $222.89, we shall have a grand total of upward of $500 which this officer would have cost the United States for his services for the space of less than two months. Surely, an expensive luxury.

If the appellee's right to recover under this statute be determined in his favor by the courts, the United States may be repeatedly required to furnish travel pay and subsistence to officers appointed to fill the places their predecessors have vacated, and this almost without limit.

It is but reasonable to suppose that the discharge contemplated by the law, which entitles the officers to its benefits, is one which occurs at the expiration of the full term of service, or at least one which occurs at the instance of the military authorities of the United States, and not at the instance and request and for the convenience and benefit of the officer himself.

Respectfully submitted.

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